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March 25, 2010

Mr. Jason King, P.E., Acting Nevada State Engineer  
Nevada Division of Water Resources  
901 South Stewart Street  
Carson City, Nevada 89701

**Comments on GBWN v. Taylor Workshop**

Dear Mr. King:

Due to schedule conflicts EskDale Center was unable to send a representative to the March 16 workshop. We offer these comments related to our standing as protestants to Nevada water rights applications by SNWA for consideration in the possible judicial and legislative remedies being considered after the Nevada Supreme Court ruling in this action. It is essential to provide due process protections to protestants in the potentially protracted consideration of large numbers of applications for large-scale municipal or industrial water-use projects, both in terms of the length of time involved and the costs associated with protest fees and legal representation.

**Define the status of previous applications and protests.**

EskDale Center needs clarification of the status of the original applications and their associated protests.

- If the refiled SNWA applications stand, are the original applications withdrawn, denied, lapsed, or in some other status?
- Do the original valid protests attach to the new applications which reference the original applications, or must we refile our protests based on the new publication deadlines?
- If EskDale Center protests the refiled applications and the originals are kept active, will the protest fees be refunded?

EskDale Center finds itself in a form of double jeopardy, at risk of losing its due process rights due to an action intended to protect due process rights. We are compelled to take action to preserve standing we already have at the risk of unnecessarily expending precious resources.

***Some reference to and procedure for preservation of standing should be included in the final solution.***

**Applications for large projects should be grouped.**

The number of applications involved in large-scale projects place a burden on protestants. The State Engineer groups applications for such projects to promote efficiency and reduce costs. The same benefit should be available to protestants who generally have fewer resources compared to the applicant.

It is appropriate to charge the applicant for each application as is the current practice, because of document processing and research required of the State Engineer. However, once this processing is completed, related applications are processed in groups. The applicant should not be allowed to preempt protests by the sheer volume of applications.

The effects of large-scale water use may be local to a specific application, but integrated projects produce effects in combination when the same or interconnected aquifers are the points of diversion. Protestants should be able to protest blocks of applications which could affect their specific location and situation in the same way the State Engineer would structure the hearings. The ability to protest a specific application should not be reduced by this option.

***Applications for integrated and large-scale water-use projects should be grouped at the time of application for processing efficiency, and single protests should be allowable for these groupings. A penalty for deception and subterfuge by applicants should be included.***

**Action on postponed applications should be treated as new applications.**

***Applications held for municipal development under the statute should be processed as new applications when rights are requested.***

A protest period should be opened when the request for approving the applications is announced. This would preserve the priority date and avoid successor-in-interest issues, while allowing current users to present their impacts and avoid a challenge of standing by the applicant.

**Allow the judicial process to proceed without intervention.**

EskDale Center believes that the Nevada District Court should fulfill its directive by the Nevada Supreme Court to define the remedy in this case, and that this action is specific to this case. Intervention by the Nevada Legislature or the State Engineer invites further legal challenges and impedes both the applicant and the protestants in the exercise of their legal rights.

*GBWN v. Taylor* was a specific request for relief regarding these SNWA applications, and if other protestants to other applications affected by the lack of action by the State Engineer desire to take similar legal action, they are welcome to do so. This case should not affect the general body of decisions made by the State Engineer in past years.

***The State Engineer should stay any actions, including the processing of SNWA's refiled applications, related to this decision pending action by the District Court to avoid having to undo the unintended consequences of hasty decisions in the face of uncertainty.***

EskDale Center appreciates the opportunity to offer these comments in support of an equitable solution to the legal situation created by *GBWN v. Taylor*. We look forward to our continued involvement as protestants to the applications filed by SNWA as the State Engineer performs its duty under the laws of the State of Nevada as refined by judicial and legislative actions.

Sincerely,



EskDale Center  
Jerald Anderson, Representative